

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 23822 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

=====

=

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

=====

=

UNION OF INDIA AND OTHERS

Versus

DINESHBHAI CHANDBHAI MALESHIYA AND OTHERS

=====

=

Appearance :

MR MUKESH A PATEL for the Petitioners

MR JV JAPPEE for Respondent Nos.1, 2 and 3

MR VINAY PANDYA, ASSISTANT GOVERNMENT PLEADER for Respondent No.4

=====

=

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 02/05/2007

ORAL JUDGMENT

1. RULE. Learned advocate Mr.J.V.Japee waives service of Rule on behalf of respondent Nos.1, 2 and 3. Mr.Vinay Pandya,

learned Assistant Government Pleader waives service of Rule on behalf of respondent No.4.

2. Union of India, through General Managar, Western Railways is before this Court along with three petitioners. The petitioners are the original defendants in Regular Civil Suit No.184 of 2003.

The petitioners being aggrieved by order dated 12.08.2005 below application Exh.43 in Regular Civil Suit No.184 of 2003 passed by the learned 6th Additional Senior Civil Judge, Himmatnagar are before this Court.

Application Exh.43 was filed seeking mandatory direction for removing wire fencing carried out by the plaintiffs during the pendency of the suit filed by them. The learned Judge was pleased to reject application Exh.43.

3. Be that as it may, without going into the merits of the matter, taking into consideration the nature of the controversy involved between the parties, i.e. about ownership of the land in question, it is deemed fit that present petition be disposed of with the following directions:

- I. The learned Judge is directed to give priority to the hearing of Regular Civil Suit No.184 of 2003 and shall

decide the same as expeditiously as possible, preferably by 31.12.2007.

II. The plaintiffs – respondents herein are directed to file an undertaking before this Court within a period of one week that they will strictly observe the status quo on the land in question.

III. The learned Judge while deciding the suit on merits, will not be influenced by the observations made in any orders, either below Exh.6 or below Exh.43 and shall also not be influenced by the fact that present order is passed asking the plaintiffs to maintain status quo.

At the request of learned advocate Mr.Japee, it is clarified that wire fencing / compound wall, if already constructed will not be removed and the plaintiffs will be having right to only use the land in question, but not to put up any construction on the land and not to deal with that property in any manner.

At the request of Mr.Patel, learned advocate for the petitioners, it is further clarified that the aforesaid direction of not removing the wire fencing / compound wall is not to mean that the wire fencing / compound wall was put up in accordance with law and not in breach of the injunction or during the pendency of the proceedings as contended by the

petitioners – original defendants.

4. These directions are given on an assurance given by the learned advocates that they will instruct their counterparts to extend full cooperation to the learned Judge to see that the suit is decided in the aforesaid time frame and that they will not resort to any avoidable adjournment.

5. With the aforesaid directions and clarifications, the petition is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(RAVI R. TRIPATHI, J.)

*Shitole